



ASC

INSOLVENCY TIMES



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Editorial



Since launch, IBC has resolved 72% of distressed asset cases

While the IBC has been effective in terms of financial recovery, with financial creditors recovering 34.3% of their claims, realisation in comparison to liquidation value was 169%. Though realisation is incidental under the Code, financial creditors recovered 34.3% of their claims which only reflects the extent of value erosion by the time the CDs entered CIRP. This means that out of the 6,571 corporate insolvency resolution process (CIRPs) that have been initiated till March 2023, 4,515 have been closed. Of these closed CIRPs, 678 resulted in the approval of resolution plans, while 2,030 ended in orders for liquidation. Moreover, 21 per cent of the closed CIRPs, have been ended on appeal or review or settled, 19 per cent have been withdrawn, 45 per cent have ended in orders for liquidation and the remaining 15 per cent have ended in approval of resolution plans. Needless to mention, thousands of applications have been withdrawn as settled during pre-CIRP period.

As per the Financial Stability Report by the Reserve Bank of India, the bankruptcy code has rescued 72% of the distressed assets since it came into being in 2016, though half of them ended in orders of liquidation.

Expect more vibrancy from Insolvency Resolution Process

Stay Alert!

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Supreme Court Lays Down The Law On Preferential Transactions: Motive is irrelevant for categorising a transaction as 'preferential', the Supreme Court upholds

A host of concerns surrounding preferential transactions under the Insolvency and Bankruptcy Code were recently addressed by the National Company Law Appellate Tribunal. The tribunal's findings have now been affirmed by the Supreme Court of India in the case of electronics manufacturing company NTL Electronics India Pvt. Payments by a company that gave unfair preference to one creditor over others prior to insolvency initiation are referred to as preferential transactions and can be wound up under the IBC.

At the NCLAT, it was alleged that NTL had engaged in preferential transactions while discharging its liabilities for loans and advances received from certain related parties. This prompted the resolution professional to file an avoidance application to reverse the transactions. Such an application is filed to reverse mala fide transactions entered into with the intent to devalue the assets of the company when it is on the verge of insolvency. The appellate tribunal had reached three key conclusions on how preferential transactions must be viewed. These have now received the apex court's approval.

Key Highlights-

- One, while dealing with preferential transactions, there is no requirement of the existence of a fraudulent intention or motive in order to label them as such.
- Any transaction under any notice, demand, or threat shall not lose its character as a preferential transaction merely on the basis of those alleged grounds. Whether a transaction was carried out voluntarily or not has nothing to do with it getting classified as 'preferential'.
- The provision on preferential transactions allows an exception for transfers made in the ordinary course of business. In order for this exception to apply, the transaction must be a regular part of business operations and unaffected by special circumstances.
- Transactions that deviate from typical financial activities of the business, such as arranging money from relatives and other parties due to financial instability cannot be considered under this exception.

IDBI Bank moves NCLAT on ZEE

IDBI Bank moved to the National Company Law Appellate Tribunal (NCLAT), challenging a National Company Law Tribunal order of 19 May, that rejected IDBI Bank’s plea to initiate insolvency proceedings against Zee Entertainment Enterprises (ZEE). The insolvency application was filed before the dedicated bankruptcy tribunal to recover dues of ₹149.60 crore from Zee Entertainment. IDBI Bank’s claim against ZEE arises out of a debt service reserve account (DSRA) guarantee that it alleged ZEE provided to secure loans provided by IDBI Bank to Siti Networks Ltd—both were part of Essel Group. IDBI Bank insisted before the NCLT that its claim is identical to that of IndusInd Bank and on that ground, the application must be permitted.

Similarly, IndusInd Bank had filed an application against ZEE, which was admitted by the NCLT on 22 February. However, the National Company Law Appellate Tribunal (NCLAT) granted relief against the NCLT order to the media company led by managing director and chief executive Puneet Goenka. Later in March, ZEE entered into a settlement agreement with IndusInd Bank, inching closer to its planned merger with Sony Pictures (Culver Max Entertainment). Both IndusInd Bank’s claim and IDBI Bank’s claim were opposed by ZEE mainly on the grounds that the guarantee was invoked during the pandemic. Under Section 10A of the IBC, insolvency proceedings cannot be initiated if the alleged default occurred before the period of 25 March 2020 to 25 March 2021, which is termed as the covid period. This statutory bar has troubled financial creditors because the insolvency proceeding can never be initiated for defaults during the covid period. ZEE’s stand was also that the guarantee is a limited guarantee and does not extend to the entire debt. Pertinently, ZEE’s proposed merger with Sony Pictures (Culver Max Entertainment) has been facing legal hurdles due to the constant opposition of various parties including IndusInd Bank, Axis Finance and JC Flower ARC. The Mumbai bench of NCLT has heard all the parties and has reserved its verdict in the matter.

NCLAT stays insolvency proceedings against government-owned Container Corporation India Ltd.

Government-owned Container Corporation India Ltd. (Concor) has got a relief from the National Company Law Appellate Tribunal (NCLAT) after the tribunal stayed an NCLT order allowing the initiation of a corporate insolvency resolution process against the company. Concor informed in an exchange filing that the NCLAT has stayed the operation of the final order and judgment dated 12 July 2023 issued by NCLT and directed the matter to be listed for further hearing on 4 September 2023.

The container and logistics firm “Concor” is facing insolvency procedures after one of its vendors moved an insolvency plea against the company for not paying a sum of INR 87.5 crore. The amount involved is an arbitral award that the vendor – Roadwings International won in an arbitration court. However, Concor has moved Delhi High Court against the arbitral award. Concor had earlier said that the NCLT admitted the insolvency application for seeking the amount awarded by an arbitral tribunal despite the fact that the said arbitral award was pending challenge from the company before the Delhi High Court. The government of India holds 54.8% stake in Concor, and it is looking to divest 30% stake in the company. The insolvency case against Concor could further delay the government’s efforts to sell part of its stake in the company.

NCLT approves Vamsiram Builders' resolution plan for Indu Projects, rejects ED and APIIC objections

Dismissing the objections of the Enforcement Directorate (ED) and the Andhra Pradesh Industrial Infrastructure Corporation (APIIC), the National Company Law Tribunal (NCLT) has approved the resolution plan of the consortium led by the promoters of Vamsiram Builders for Indu Projects Ltd. A developer of townships and industrial parks, Hyderabad-based Indu Projects had defaulted on payments to lenders owing to the ED attaching its assets in connection with a probe into the alleged disproportionate wealth of Andhra Pradesh Chief Minister Jagan Mohan Reddy.

The NCLT bench at Hyderabad comprising judicial member Telaprolu Rajani and technical member Charan Singh approved the Rs 501 crore resolution plan of the consortium led by Vamsiram Builders' promoter B Subba Reddy and C Venkateswara Reddy, and dismissed the objections filed by the ED and APIIC through intervention petitions airing apprehensions over the disposal of assets of the bankrupt firm.

The NCLT had earlier approved a resolution plan worth Rs 600 crore submitted by Earthin Projects, making it one of the biggest resolution plans of 2019-2020. But Earthin failed to pump in the promised funds, leading to wilful violation of the resolution plan, forcing the tribunal to order criminal proceedings. The lenders of Indu Projects, who had moved the tribunal in early 2019 seeking to initiate a corporate insolvency resolution process (CIRP), had claimed Rs 4,531 crore of dues, of which Rs 4,139 crore was admitted. The lenders include SBI, IDBI Bank, Edelweiss ARC, Bank of India, Indian Overseas Bank, Syndicate Bank, Punjab National Bank, Canara Bank, UCO Bank, Central Bank of India, Andhra Bank, and Srei Infrastructure Finance. Though Indu Projects, promoted by I Syam Prasad Reddy, was admitted to CIRP in February 2019, the tribunal had extended the CIRP period multiple times owing to several factors including legal disputes, Covid lockdown, absence of an attractive offer from resolution applicants, and lack of consensus among lenders, among others.

After the Earthin Projects fiasco, the tribunal ordered a fresh CIRP, wherein eight expressions of interest (EoI) were received. The plan submitted by Subba and Venkateswara Reddy was approved by the Committee of Creditors (CoC). The funds are to be delivered within 90 days of approval, from which Rs. 394 crore would go to the financial creditors. While dismissing the intervention petitions of the ED and APIIC on the sale of assets, the tribunal has noted the assurance of the resolution professional that there is no proposal to sell the assets attached by the ED, and the lands whose allotments have been cancelled by APIIC.

Bankrupt Punj Lloyd fails to draw bidders

Punj Lloyd has failed to secure any bids from potential acquirers, according to people familiar with the matter. As a result, the liquidator of the insolvent engineering firm will have to approach the shareholders' consultative committee to reduce the reserve price, pegged at ₹1,061 crore, and then seek approval of the National Company Law Tribunal (NCLT).

The liquidator had issued an advertisement for the sale of the company as a going concern on June 5, bidders had to submit an earnest money deposit of ₹10 crore by July 7 and the e-auction was slated for July 10.



RECENT JUDGMENTS

Tejinder Pal Setia v. Kone Elevator India Private Limited & Ors.

No infirmity can be attributed if invoices are not attached with Form 3 Demand Notice: NCLAT Delhi

The NCLAT observed that an operational creditor has the liberty to submit notice either in Form 3 or Form 4 as prescribed within the Rules, and when a notice is issued in Form 3, no infirmity can be attributed if invoices were not attached.

Asset Reconstruction Company (India) Limited v. Uniworth Textiles Limited

Time period spent in pursuing any proceeding under the SICA 1985, needs to be excluded for computation of limitation period and every note or caveat regarding entries made in the balance sheet cannot be used as a ground to deny acknowledgment of debt: NCLAT Delhi

The NCLAT noted that any time period spent in pursuing any proceeding under the Sick Industrial Companies (Special Provisions) Act, 1985, needs to be excluded from the computation of the limitation period vide Section 22(5) of the SICA. Further, while considering whether a mere entry in the balance sheet of the corporate debtor would amount to an acknowledgment of debt or not, the NCLAT held that while a mere entry in the balance sheet cannot be taken as an unqualified acknowledgment of debt, every note or caveat regarding entries made in the balance sheet cannot be used as a ground to deny acknowledgment of debt and one would have to consider the overall scenario to ascertain the true intent of such entries and caveats. Accordingly, by noting that out of 13 balance sheets from 2006-07 to 2018-19, where disputes were recorded in only 3 balance sheets, the NCLAT held that such entries could not deny acknowledgement of a debt by the corporate debtor.

Vipin Sharma v. Kaliber Associates Private Limited

Entries in balance sheets and the financial statement of the corporate debtor depicting short term loans from the financial creditor can be relied on for acknowledgment of a debt: NCLAT Delhi

The NCLAT held that entries in balance sheets and the financial statement of the corporate debtor depicting that the corporate debtor had borrowed short term loans from the financial creditor can be relied on for acknowledgment of a debt, and would override the unregistered MoU which mentioned that the amount advanced was merely an investment in the corporate debtor.

Further, the NCLAT held that an amount advanced by the promoter, director, or shareholder of the corporate debtor to improve the financial health of the corporate debtor would have the commercial effect of borrowing and, hence, would qualify as a financial debt, notwithstanding the fact that there was no provision for interest thereon.

Anuj Sharma v. Rustagi Projects Private Limited

Interest component can be added to the principal component for meeting the threshold for initiating CIRP where parties have agreed upon the interest: NCLAT Delhi

The NCLAT relied on the principle laid down in Prashant Agarwal vs. Vikash Parasrampur & Anr. (Company Appeal (AT) (Ins.) No. 690 of 2022) and noted that where parties have agreed upon the interest, such interest component can be added to the principal component for meeting the threshold for initiating CIRP. Further, the NCLAT held that the bar on filing an application under Section 10A of the Code, would not apply in cases where the default has been committed before the period specified in Section 10A of the Code and where merely the demand notice has been issued during the period specified in Section 10A of the Code.

Kalpesh Ramniklal Shah v. Mundara Estate Developers Limited

Section 7 cannot be rejected on the ground of alleged breach of the provisions of Companies Act: NCLAT Delhi

The NCLAT held that an application under Section 7 cannot be rejected on the ground of alleged breach of the erstwhile Section 295 of the Companies Act, 1956 (corresponding to Section 185 of the Companies Act, 2013).

Mukesh Kumar v. Ambrane India Private Limited and Anr.

Reasons are required to be assigned in the event of the rejection of a Section 7 application, which is not obligatory in the event of acceptance of the Section 7 application: NCLAT Delhi

The NCLAT agreed with the views of the Adjudicating Authority, that the board resolution of the financial creditor, whereby the financial creditor had agreed to disburse a loan to the corporate debtor on terms which specified, inter alia, the rate of interest, along with the financial creditor's relevant bank statements and the balance sheet of the Corporate Debtor which showed amounts payable to the financial creditor, and certificate from the information utility were sufficient to prove a financial debt in the absence of a financial agreement between the parties. The NCLAT further observed that only in the event of the rejection of a Section 7 application, reasons are required to be assigned and in the event of acceptance of the Section 7 application, no requirement of assigning detailed reasoning is required under the Code.

Manesh Agarwal v. Pramod Kumar Sharma

Until declared as an undischarged insolvent by a competent court, a resolution applicant cannot be disqualified under Section 29A of the Code: NCLAT Principal Bench

The NCLAT noted that the term 'undischarged insolvent' has not been defined in the Code and, hence, until declaration by a competent court regarding the status of undischarged insolvency, a resolution applicant cannot be disqualified under Section 29A of the Code, merely on account of it being the sole shareholder and director of a company that had undergone liquidation.

Akashganga Processors Private Limited v. Shri Ravindra Kumar Goyal & Ors.

Resolution Plan cannot discriminate between same class of creditors by providing for payment to some of the operational creditors: NCLAT Principal Bench

The NCLAT held that while a resolution plan can provide NIL payment to the operational creditors, such resolution plan cannot discriminate between same class of creditors by providing for payment to only some operational creditors to keep the corporate debtor as a going concern. To avoid such discrimination and to save the resolution plan from being invalidated, the NCLAT modified the resolution plan by directing that the amount stipulated for the selected operational creditors to be distributed to all the operational creditors.

Nandamuri Meenalatha v. Quality Steels and Wire Products and Anr.

Violation of an agreement/contract inter se the parties and the quality of raw materials supplied, does not constitute a 'pre-existing dispute': NCLAT Chennai

The NCLAT observed that a dispute relating to the violation of an agreement/contract inter se the parties, as in the instant case, which related to non-submission of test certificates to the corporate debtor and the quality of raw materials supplied, does not constitute a 'pre-existing dispute' with respect to the sum payable in law.

The NCLAT observed that the proceedings under the Code are summary in character, and that the Adjudicating Authority, not being a recovery forum or court, where no elaborate enquiry is conducted like that of a regular trial of a civil case, the controversy/dispute/claim with respect to the 'interest' cannot be adjudicated. The NCLAT further observed that, the quantification of the exact sum of the claim of an operational creditor is not relevant for an admission of an application, and the exact claim amount can be determined by the interim resolution professional in the course of the corporate insolvency resolution process. The NCLAT also noted that whether the corporate debtor is a going concern, is not relevant for admission of a Section 9 application.

Jasamrit Designers Private Limited v. Gian Chand Narang, Liquidator of Apex Buildsys Limited and Ors.

Reliefs / concessions/ directions granted by NCLT in a going concern sale cannot be elaborate and general prayers are required to be commensurate: NCLAT Delhi

The NCLAT held that, in a going concern sale, while the Adjudicating Authority has power to grant such reliefs / concessions/ directions which may be necessary for operationalization of the corporate debtor, such reliefs / concessions/ directions cannot be elaborate and general prayers are required to be commensurate to and in accordance with the terms and conditions of the process document.

For enquiries related to:

- Insolvency Process,
- Bankruptcy Process,
- Filing petition with NCLT/DRT,
- Appointment of Insolvency Professionals,
- Assets Management of the Company,
- Hearing of Cases or any other enquiries



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